

### REMARKS

The pending claims are 1-21, of which Claims 1 and 12 are in independent form. Claims 1, 3 and 21 have been amended to define still more clearly what is regarded as the invention. Favorable reconsideration of the present claims is respectfully requested.

Initially, it is noted that the Office Action Summary Page indicates Claims 12-20 as allowed, while Page 4, Paragraph 8 indicates these claims "would be allowable if rewritten or amended to overcome the claim objections set forth in this Office action." Having already amended these claims in accordance with the Examiner's kind suggestions in the previous Amendment dated October 3, 2005, and there being no objections to the claims anywhere in the present Action, Applicant understands the Claims 12-20 as allowed.

Further, the Examiner is again thanked for the indication that Claims 5, 6, and now 21, would be allowable if rewritten to overcome the rejections as set forth below. Respectfully, however, these claims have not been so rewritten for the reasons that follow.

Claims 1-11, along with 21, are again rejected under 35 U.S.C. § 112, second paragraph, for alleged indefiniteness in the last three lines of Claim 1 generally, and particularly in the phrases "the front panel flap disposed on said side panel" and "said side panel". Claim 1 is amended to make clear that the at least one sidearm is present for interleaving between the inner side of one of the side panels and one of the front panel flaps disposed on the inner side of the side panels. As well, Applicant has amended Claim 3 to clarify that only a single top panel is present in the invention as described in Claim 1. Accordingly, Applicant respectfully submits that Claims 1-11 and 21 satisfy the requirements of 35 U.S.C. § 112, second paragraph.

Further in the Office Action, Claims 1-4 and 8 again stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over both U.S. Patent No. 3,593,908 (*Desmond*) in view of U.S. Patent No. 4,752,029 (*Buford*) and, along with Claim 11, as allegedly unpatentable over U.S. Patent No. 4,602,735 (*Aaron*) in view of *Buford*. Claim 7 is also rejected under §103(a) as allegedly unpatentable over the above art combinations, further in view of either U.S. Patent No. 5,857,586 (*Scherr*) or U.S. Patent No. 4,560,062 (*Valiulis*). Meanwhile, Claims 9 and 10 are rejected under §103(a), as allegedly obvious over the prior art combinations as applied to Claim 3, further in view of U.S. Patent No. 6,213,388 (*Ours et al.*). Applicant respectfully traverses the above rejections.

Applicant draws the Examiner's attention to the fact that Claim 1, as amended, is directed to a unitary carton as illustrated in Figure 2. A notable feature of this invention is a top panel joined to the side and back panels that is removable in whole or in part to expose product through the top of the carton. This top panel is advantageous because, when removed either partially or fully, it forms an opening with the front panel for both greater visibility of the product through the carton top, as well as easier and improved access thereto for consumers. In stark contrast, the prior art does not contain any suggestion of such top panel that is removable either in whole or in part.

To begin, *Desmond* is directed to a vertically-standing dispenser bin. *See* Figures 1-3. The cited embodiment, Figure 11, illustrates a front face with a moveable bottom portion 32. *See* Figure 11. Here, the opening on the bin is limited to the area bordered by the moveable front panel portion 32, the fixed upper front panel portion (not labeled; *see* corresponding panel 23 in alternate embodiment), and bin side panels 42. *See generally*, Figure 12 and column 2, lines 40-64. Notably, the top portion of the front face is fixed, thereby obstructing greater access to the product inside when assembled. In

contrast to Applicant's carton, in *Desmond* the top fixed portion of the front face does not allow for a combined open space formed of the partially or fully removed top together with the radially-openable front access panel.

*Buford* fails to remedy the deficiencies of *Desmond*. The present reference, similarly teaching a carton with a display bin 35 disposed on the front panel, teaches a complete front face portion 12-35-31 that is comprised of a lower and upper component 35 and 12, respectively. There is also provided a fixed top panel 22. See Figures 7-9. Consequently, any opening to the product is limited to the space bordered by front panel 12, front bin wall section 50, and side bin wall sections 54 and 56. The top panel 22, meanwhile, remains permanently closed.

It is respectfully submitted that any combination of *Desmond* with *Buford* would not teach the present invention because neither reference suggests "a top panel joined to said side and back panels that is removable in whole or in part to expose product through the top of the carton", as recited in Claim 1.

Specifically, because the movable access panel in both references is the lower portion of the complete front face of each respective carton, it is not possible for the top panel to form an opening with the moveable front access panel under any proposed combination of the references at issue. Neither reference teaches a removable top panel, but even assuming, *arguendo*, that such removable top was present, the intermittent fixed upper portion of the complete front face panel in such combination would still preclude an unhindered, and thereby improved, access opening. "If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious." MPEP § 2143.01 at 2100—138 (8<sup>th</sup> Ed., Rev. 3, August

2005) (citing *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)). Accordingly, Applicant believes Claim 1 to be patentable over the combination of *Desmond* with *Buford*, and respectfully requests withdrawal of the present rejection.

Claim 1 is likewise seen as patentable over the combination of *Aaron* with *Buford*. *Aaron* relates to a vertically-standing dispenser having a pull-out lower front panel 10. However, this reference maintains the same drawbacks of both *Desmond* and *Buford* in that the front face panel is comprised of the upper and lower portions 18 and 10, respectively, that, when assembled, bar complete access from the top and front of the dispenser. That is, the opening of *Aaron* is limited to the space bordered by the top edge of the panel 10, the sliding lock tabs 11 and the lower edge of the upper front panel 18. As a result, any combination with *Buford* would again fail to teach, or even suggest, the advantageous features of Applicant's invention.

Moreover, a review of the other art of record, including *Scherr*, *Valiulis* and *Ours*, has failed to reveal anything which, in Applicant's opinion, would remedy the deficiencies of *Desmond* or *Aaron* in view of *Buford* as discussed above, as references against the claims herein. Specifically, *Scherr*, *Valiulis* and *Ours* all fail to teach or suggest a top panel that is removable in whole or in part, and therefore do not remedy the deficiencies of the base references. Claims 7, 9 and 10 are thus believed additionally patentable over the other art of record.

Accordingly, based on all of the foregoing, Applicants kindly submit that Claim 1, along with the claims dependent thereon, are patentable over the cited art, and respectfully request withdrawal of the rejections under 35 U.S.C. § 103(a).

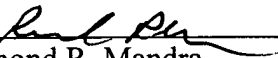
This Amendment Final Action is believed to place this application in condition for allowance and, therefore, its entry is believed proper under 37 C.F.R. § 1.116.

Accordingly, entry of this Amendment After Final Action, as an earnest effort to advance prosecution and reduce the number of issues, is respectfully requested. Should the Examiner believe that issues remain outstanding, it is respectfully requested that the Examiner contact Applicant's undersigned attorney in an effort to resolve such issues and advance the case to issue. In view of the foregoing amendments and remarks, Applicant respectfully requests favorable reconsideration and the allowance of the present application.

Wherefore, it is respectfully submitted that the cited art does not disclose or suggest the presently claimed invention. Accordingly, passage to issue of presently claimed invention is respectfully requested.

Applicant's undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

  
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